



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 05264-99
7 July 2000

AKI [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Petty Officer [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 9 March and 10 April 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions.

The Board found your reporting senior adequately explained why mid-term counseling had not been conducted. They were unable to find that you received no counseling about the deficiencies he documented. In this regard, they generally do not grant relief on the basis of an alleged lack of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, the Board was unable to find any authority requiring that the commanding officer, rather than the executive officer, sign the contested performance evaluation.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

526499



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1610

PERS-311

9 MAR 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: AK1 [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of her performance report for the period 16 November 1996 to 9 June 1997

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member did not indicate a desire to submit or not to submit a statement due to her refusing to sign the report. The member includes a statement to the report with her petition. The member's statement was found unsuitable for filing due to missing the original reporting senior's endorsement and being submitted two years after the ending date of the report. However, if the member resubmits her statement per reference (a), Annex S, paragraph S-8, CHNAVPERS has no objection with placing it in her digitized record.

b. The member alleges that the performance report in question was used as a form of retaliation after requesting a transfer to a different department, due to working in a hostile environment.

c. The report in question is a "Special" report submitted to document the member's declining performance. We feel that the material provided with the member's petition does not support the member's allegations. The report represents the judgment and appraisal responsibility of the reporting senior for a specific period of time. It is not required to be consistent with

Subj: A [REDACTED]

previous or subsequent reports, and is not routinely open to challenge.

d. The member does not prove the report to be unjust or in error.

3. We recommend that the member's petition be forwarded to the Director, Equal Opportunity Division (PERS-61), for comment on the member's allegation of retaliation. If the member's allegation is found to have merit, we have no objection with removing the report.

[REDACTED]

Head, Performance
Evaluation Branch